

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

THORNTON STORAGE LLC,	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. _____
	)	
READY MIX USA, LLC,	)	
	)	
	)	
Defendant.	)	
_____	)	

**NOTICE OF REMOVAL**

Ready Mix USA, LLC (“Ready Mix”) files this Notice of Removal of Civil Action Number 22108203 from the Superior Court of Cobb County, Georgia, to the United States District Court for the Northern District of Georgia, Atlanta Division, respectfully showing the Court as follows:

1.

Ready Mix is the defendant in a civil action brought in the Superior Court of Cobb County, Georgia, entitled *Thornton Storage LLC v. Ready Mix USA, LLC*, bearing Civil Action Number 22108203.

2.

Copies of all process, pleadings, and Orders served on or by Ready Mix in said action are attached hereto as Exhibit A.

3.

Said action was commenced by the filing of a Complaint in the Superior Court of Cobb County, Georgia, on November 23, 2022. Plaintiff named Ready Mix as the defendant. Ready Mix was served on November 29, 2022.

4.

The Complaint did not identify the members of Thornton Storage LLC.

5.

On December 22, 2022, the undersigned counsel telephoned counsel for Thornton Storage LLC and, among other things, requested the identities of Thornton Storage LLC's members. Counsel for Thornton Storage LLC replied that he did not have any information about their identities at that time.

6.

Following an agreed extension, Ready Mix filed an Answer to the Complaint in the Superior Court of Cobb County on January 20, 2023, and, on January 26, 2023, served Interrogatories and Requests for Production of

Documents on Thornton Storage LLC. The first interrogatory requested the names and locations of the members of Thornton Storage LLC.

7.

Following several agreed extensions, Plaintiff served responses to Ready Mix's First Interrogatories on March 17, 2023. *See* Exhibit B. Plaintiff identified the following members of Thornton Storage LLC:

1. James M. Cesare and Julie L. Cesare as Trustees of the Jim and Julie Cesare Family Trust dated August 13, 1998, residents of California;
2. Crabco Investments, a California general partnership having Rodney Palla and Cheryl Palla as general partners, residents of California;
3. Crabco Properties, LP, a California limited partnership, having Blake Palla as general partner, resident of California;
4. Robert McBride, resident of California;
5. Barden R. Brown, Jr., resident of Georgia;
6. C. Scott Akers, Jr., as Trustee of H. A. Akers GST Trust, resident of Georgia;
7. Robert Akers, resident of Georgia;
8. Chantaybar Properties, LLC, a Georgia limited liability company.

*See id.*, p. 2.

8.

The controversy between Plaintiff and Defendant is a controversy between citizens of different states.

(a) Plaintiff, Thornton Storage LLC, was at the time of the commencement of this action, and at all times thereafter through and including the present time, a citizen of the States of Georgia and California. *See* ¶ 7, above, and Ex. B, p. 2.

(b) Defendant, Ready Mix USA, LLC, is a limited liability company with a sole member, CEMEX Southeast Holdings, LLC. Cemex Southeast Holdings, LLC has a sole member, Cemex, Inc., a Louisiana corporation, with its principal place of business in Texas.

(c) Therefore, Ready Mix USA, LLC, is a citizen of the States of Louisiana and Texas.

9.

Based on the allegations contained in Plaintiff's Complaint, the amount in controversy exceeds the sum of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs. In addition to other relief, Plaintiff seeks compensatory damages in an amount "not less than \$350,000" for trespass and nuisance. *See* Complaint, p. 7.

10.

Because there is complete diversity of citizenship between Plaintiff and Defendant and because the amount in controversy exceeds the sum of Seventy-Five Thousand Dollars (\$75,000.00), Defendant may remove this action pursuant to 28 U.S.C. §§ 1332 and 1441.

11.

Ready Mix has satisfied the procedural requirements for removal.

(a) Under 28 U.S.C. § 1446(b)(3), “a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.”

(b) Plaintiff’s March 17, 2023, Responses to Defendant Ready Mix USA LLC’s First Interrogatories contained the first information on the identities of Thornton Storage LLC’s members. Good faith efforts to obtain that information at an earlier date were unsuccessful. Therefore, the Responses to Defendant Ready Mix USA LLC’s First Interrogatories are an “other paper from which it may first be ascertained that the case is one which is or has become removable.”

(c) This Notice is timely filed on April 17, 2023, within thirty days of service of the Responses to Defendant Ready Mix USA LLC’s First

Interrogatories.

(d) Under 28 U.S.C. § 1446(c), “[a] case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section 1332 more than 1 year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.”

(e) This Notice is timely filed on April 17, 2023, within 1 year of Plaintiff’s filing of the Complaint in the Superior Court of Cobb County, which occurred on November 23, 2022.

(f) This Notice of Removal is filed in the correct court. The notice is to be filed in the “district court of the United States for the district and division within which such action is pending.” 28 U.S.C. § 1446(a). This action was pending in Cobb County, Georgia. The Northern District of Georgia, Atlanta Division, comprises the counties of Cherokee, Clayton, Cobb, DeKalb, Douglas, Fulton, Gwinnett, Henry, Newton and Rockdale. *See* 28 U.S.C. § 90(a)(2).

(g) Pursuant to 28 U.S.C. § 1446(d), Ready Mix is filing written notice of this removal and a copy of the Notice of Removal with the clerk of the state court in which this action is currently pending and will serve a copy of this Notice of Removal and its attachments on all parties to the removed action.

12.

Therefore, this action is properly removed to this Court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

WHEREFORE, Defendant respectfully removes this action from the Superior Court of Cobb County, Georgia, Civil Action Number 22108203, to this Court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

This 17<sup>th</sup> day of April, 2023.

**KAZMAREK MOWREY CLOUD  
LASETER LLP**

/s/ Jennifer A. Simon

Jennifer A. Simon

Georgia Bar No. 636946

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**Attorney for Defendant Ready Mix USA,  
LLC**

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**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing **NOTICE OF REMOVAL** on counsel for Plaintiff by filing a copy with the Court's CM/ECF system and by electronic mail, addressed as follows:

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*Counsel for Plaintiff Thornton Storage LLC*



This 17<sup>th</sup> day of April, 2023.

/s/ Jennifer A. Simon

Jennifer A. Simon

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USA, LLC**